

1 HONORABLE MICHELLE L. PETERSON
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 WILD FISH CONSERVANCY,

11 Plaintiff,

Case No. 2:20-cv-00417-RAJ-MLP

12 v.

DEFENDANT-INTERVENOR ALASKA
TROLLERS ASSOCIATION'S OBJECTIONS
TO REPORT AND RECOMMENDATION

13 SCOTT RUMSEY, *et al.*,

14 Defendants.

Noting Date: January 27, 2023

15 And

16 ALASKA TROLLERS ASSOCIATION,
and STATE OF ALASKA,

17 Defendant-Intervenors.

19 **I. INTRODUCTION**

20 The trollers of Southeast Alaska, represented in this matter by the Alaska Trollers
21 Association (“ATA”), are great stewards of the environment. They catch salmon one at a time,
22 cherishing the benefits that the wild fish have provided to their families and communities for
23 generations. The Wild Fish Conservancy (“WFC”)—a Seattle-based organization determined to
24 eliminate hatcheries and the sustainable harvest of salmon, with no ties to the communities of
25 Southeast Alaska—has exploited flaws in environmental analyses performed by the federal
26 government in a quest to decimate that generational way of life of thousands of Alaskans. To

DEFENDANT-INTERVENOR ALASKA TROLLERS
ASSOCIATION'S OBJECTIONS TO REPORT AND
RECOMMENDATION -- 1

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1 WFC, the thousands of Alaskans that have sustainably fished for generations are nothing more
 2 than insignificant numbers that can be disregarded in exchange for hypothetical and attenuated
 3 benefits to the Southern Resident Killer Whale (“SRKW”) population. The remedy proposed by
 4 the December 13, 2022 Report and Recommendation, Dkt. No. 144 (“Report and
 5 Recommendation”), will devastate many comminutes across Alaska. Pursuant to the ATA’s
 6 following objections, the illogical and inequitable Report and Recommendation must not be
 7 adopted, and the Court should adopt a remedy that maintains the incidental take protections of
 8 the 2019 Southeast Alaska Biological Opinion (“2019 BiOp”).

9 This dispute arises out of the National Marine Fisheries Service’s (“NMFS”) update of
 10 environmental analyses related to fishing in Southeast Alaska. The fishing regime is complex;
 11 over the decades, there has been a careful balance maintained that allows thousands of Alaskans
 12 to continue their generational way of life under the terms of the international Pacific Salmon
 13 Treaty between the United States and Canada. NMFS incorporated reduced harvest limits from
 14 the latest version of the Pacific Salmon Treaty in the 2019 BiOp. *See, e.g.*, AR47202-03. The
 15 2019 BiOp concluded, in relevant part, that allowing the Southeast Alaska fisheries to continue
 16 to harvest Chinook salmon would not jeopardize the continued existence of the SRKW
 17 population or listed salmon species. AR47508. The 2019 BiOp examined historical data and
 18 recognized that some Chinook caught by trollers in Southeast Alaska could impact the prey
 19 availability of the SRKW population, creating a tenuous connection between the Southeast
 20 Alaska fisheries and the SRKW. However, with such great focus on the SRKW population in
 21 recent years, the 2019 BiOp also included programs that have been specifically designed to
 22 increase prey for the SRKW population at the times and places most crucial for the SRKWs. The
 23 2019 BiOp concluded that allowing the trollers of Southeast Alaska to continue to fish at a
 24 decreased level would not jeopardize the SRKW population in light of NMFS’s prey increase
 25 program. AR47508.

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1 During the merits portion of this case, the Court agreed with WFC’s arguments that
 2 NMFS violated the Endangered Species Act (“ESA”) and the National Environmental Policy Act
 3 (“NEPA”).¹ Namely, the Court found that NMFS failed to sufficiently explain its prey increase
 4 program to demonstrate that benefits from the program would occur with necessary certainty to
 5 inform whether the Southeast Alaska fisheries would jeopardize the SRKW population.

6 Now, at the remedy stage, the Report and Recommendation concludes that in the years
 7 following the issuance of the 2019 BiOp, the prey increase program has been implemented with
 8 such certainty that the program must continue. With that understanding, the Report and
 9 Recommendation illogically concludes that the appropriate remedy for NMFS’s errors is to
 10 uphold the prey increase program yet revoke incidental take protection under the ESA afforded
 11 to the Southeast Alaska fisheries through the 2019 BiOp.

12 The Report and Recommendation is not fully informed on the impacts of its proposed
 13 decision because it erroneously refused to consider multiple declarations submitted by the ATA.
 14 Contrary to the Report and Recommendation’s conclusions, if the prey increase program is
 15 maintained, allowing Southeast Alaska fisheries to continue to harvest with incidental take
 16 protection will have mitigated impacts that will be far outweighed by the effective closure of the
 17 troll fisheries and the resulting catastrophic economic impacts to the communities of Southeast
 18 Alaska. Missing the spring and summer seasons will preclude many trollers from maintaining
 19 their way of life.

20 The extraordinary nature of this remedy cannot be overstated. Fisheries along the coasts
 21 of Oregon, Washington, and Canada continue to harvest salmon that provide prey for SRKWs.
 22 Yet, the Report and Recommendation proposes reaching up to Alaska and removing the least
 23 consequential aspect of the 2019 BiOp to the SRKWs—the authorization for Southeast Alaska
 24

25 ¹ The Court adopted Magistrate Peterson’s September 27, 2021 Report and Recommendation on the merits, Dkt. No. 26 111, in its entirety. Order Adopting Report and Recommendation, Dkt. No. 122. Accordingly, the ATA refers to Dkt. No. 111 for the Court’s holding on the merits.

1 fisheries. Respectfully, the ATA fails to see the logic or the equity in the Report and
 2 Recommendation's decision to punish the trollers for the faults of the federal government. As the
 3 trollers' way of life hangs in the balance, the ATA humbly requests that the Court decline to
 4 adopt the Report and Recommendation and craft a remedy that maintains the incidental take
 5 protections of the 2019 BiOp.

6 II. FACTUAL BACKGROUND

7 A. The 2019 Biological Opinion.

8 In the 2019 BiOp, NMFS evaluated the current states of listed species, the environmental
 9 baseline, the effects of the proposed actions, effects of related actions, and cumulative effects to
 10 determine whether the actions authorized by the 2019 BiOp would jeopardize any listed species.
 11 AR47508. The 2019 BiOp resulted in an Incidental Take Statement ("ITS") that authorized
 12 Southeast Alaska fisheries to harvest up to the limits of the 2019 Pacific Salmon Treaty limits
 13 while incidentally taking some listed species. AR47517-19. The 2019 BiOp also authorized a
 14 "conservation program for critical Puget Sound stocks and SRKW." AR47201. One of three
 15 elements of that program was a prey increase program designed "to provide an immediate and
 16 meaningful increase in prey availability for SRKWs." AR47202.

17 The BiOp explains that any reduction in prey available to the SRKWs in their coastal
 18 range from the Southeast Alaska fisheries "would likely occur rarely and during a time period
 19 when the whales are more often observed in inland waters" and "would be spread across a larger
 20 portion of the geographic range of Southern Residents." AR47445. In stark contrast, the prey
 21 increase program was designed to direct additional prey to "the times and areas most important
 22 to SRKWs." AR47203. That program helps offset Chinook harvests from Canada and all U.S.
 23 salmon fisheries, not just the Southeast Alaska fisheries. AR47508.

24 The 2019 BiOp provided that the actions covered by the 2019 BiOp—including
 25 reductions in Southeast Alaska fisheries' harvest levels and the prey increase program—are
 26 "intended to improve the overall conditions for the whales' Chinook salmon prey, increase prey

1 abundance available to the whales, and reduce impacts to the whales' survival and reproduction." AR47508. NMFS concluded that the proposed actions at issue "are not likely to appreciably
 2 reduce the likelihood of both survival and recovery of Southern Resident killer whales or destroy
 3 or adversely modify their designated critical habitat." AR47508.

4 **B. Merits Ruling.**

5 The Court made several findings in its ruling on the merits that are relevant to the ATA's
 6 objections. The Court highlighted that NMFS's finding of no jeopardy regarding SRKWs
 7 "relie[d] upon the benefits of the prey increase program." Dkt. No. 111 at 32. While
 8 acknowledging the entire conservation program, the Court explained that "the central point at
 9 issue is the third component of NMFS's conservation plan—the prey increase program—as it
 10 relates to the adverse impact on SRKW." *Id.* at 28. The Court held that the program was not
 11 sufficiently specific or binding to support the no jeopardy finding. *Id.* at 32-33. As a result, the
 12 Court ruled that NMFS violated its substantive obligation to ensure no jeopardy to the SRKW
 13 under Section 7 of the ESA. *Id.* at 33-34. The Court also held that NMFS failed to consider the
 14 prey increase program when reaching a no jeopardy conclusion for listed salmon species. *Id.* at
 15 32-33.

16 **C. Remedy Report and Recommendation.**

17 The Report and Recommendation's description of and underlying reasoning for the
 18 proposed remedy form the bases for the ATA's objections.

19 First, during oral argument, Magistrate Peterson "agree[d]" that the relief requested by
 20 WFC was "not a narrow, moderate, or reasonable request" but was "radical." Dkt. No. 143 at
 21 54:13-16. The Report and Recommendation, however, makes multiple references to the narrow
 22 or partial nature of the vacatur requested by WFC. *See, e.g.,* Dkt. No. 144 at 9 fn. 6, 13, 24, 30
 23 fn. 17.

24 Second, in response to WFC's request to strike multiple declarations submitted by
 25 Federal Defendants and both Defendant-Intervenors, the Report and Recommendation concludes
 26

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1 that it is improper to consider the opinions of ATA members Paul Olson and Tad Fujioka
 2 because it is not evident that those individuals are sufficiently qualified in economics or data
 3 analysis, respectively. Dkt. No. 144 at 22-23. During oral argument, Magistrate Peterson
 4 expressed surprise that no sur-reply was filed in response to WFC's request to strike the
 5 declarations. Dkt. No. 143 at 4:14-18. The ATA was prepared to address the issue at oral
 6 argument and both Defendant-Intervenors requested an evidentiary hearing to resolve any
 7 remaining issues. *Id.* at 9:12, 51:22-23. Those requests were denied by a minute entry. *See* Dkt.
 8 No. 141.

9 Third, the Report and Recommendation makes multiple important findings related to the
 10 prey increase program. The Report and Recommendation explains that “[t]he prey increase
 11 program—though previously uncertain and indefinite in the 2019 SEAK BiOp—has also now
 12 been funded and begun providing prey the past three years.” Dkt. No. 144 at 31. As such, the
 13 program is “on track to provide the benefits” anticipated in the 2019 BiOp. *Id.* at 12. Thus, the
 14 Report and Recommendation finds that vacating the program “would ultimately put the SRKW
 15 at further risk of extinction.” *Id.* at 33. Although not considered in NMFS’s jeopardy analysis for
 16 listed salmon species, the Report and Recommendation reasons that any impacts of the program
 17 on the wild Chinook population can be mitigated. *Id.* at 35. And, according to the Report and
 18 Recommendation, vacating the prey increase program is unwarranted because NMFS is now
 19 better suited to offer better reasoning for the program if it were to be remanded. *Id.* at 36-37.

20 Lastly, the Report and Recommendation concludes that the ITS should be vacated,
 21 reasoning that the economic consequences “do not overcome the seriousness of NMFS’s
 22 violations” and “the harm posed to the SRKW by leaving the ITS in place.” *Id.* at 30. The Report
 23 and Recommendation does not address the 2019 BiOp’s analysis that the prey increase program
 24 would mitigate the impacts of the Southeast Alaska fisheries. The Report and Recommendation
 25 is also silent on whether NMFS would reach the same decision on the ITS, given that the prey
 26 increase program will continue.

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III. OBJECTIONS²

1. The Report and Recommendation improperly concludes that the opinions of Paul Olson and Tad Fujioka could not be considered.
2. The Report and Recommendation illogically and inequitably concludes that the ITS should be vacated when the prey increase program will continue.

IV. STANDARD OF REVIEW

If parties object to a magistrate judge's recommendations, the Article III judge "must review de novo the portions of the recommendations to which the parties object." *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d 1027, 1032 (9th Cir. 2009).

V. ARGUMENT

A. The Report and Recommendation's Conclusion that the Declarations of Paul Olson and Tad Fujioka Could Not Be Considered Is Inconsistent with the Standard of FRE 702.

Federal Rule of Evidence 702 governs expert testimony. It “should be applied with a liberal thrust favoring admission.” *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017) (internal quotation marks omitted). Outside of the jury trial context, “there is less danger that a trial court will be unduly impressed by the expert’s testimony or opinion in a bench trial.” *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014) (internal quotation marks omitted). “Rule 702 generally is construed liberally,” particularly because expert testimony can be “based on some ‘other specialized knowledge.’” *United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000) (quoting FRE 702(a)). FRE 702 “does not forbid admission of [an opinion] where the weight of the conclusions [is] subject to challenge.” *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1047 (9th Cir. 2014) (internal quotation marks omitted). The Report and Recommendation acknowledges that “only a minimal foundation of knowledge, skill, and experience is required” under FRE 702. Dkt. No. 144 at 17 (internal quotation marks and

² To preserve for appeal the arguments that WFC lacked standing at both the merits and remedy stage of this proceeding—Dkt. No. 128 at 5-7; Dkt. No. 98 at 1-7—the ATA objects to the Court’s conclusion that WFC has standing for the requested remedy. See Dkt. No. 144 at 13 n. 7.

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1 emphasis omitted).

2 Here, considering the lack of a jury and the specialized knowledge of Paul Olson and Tad
 3 Fujioka, the Report and Recommendation erred in granting WFC’s request to strike both
 4 declarations. In the very least, the ATA’s request for an evidentiary hearing should have been
 5 granted.

6 The Report and Recommendation incorrectly concludes that “minimal foundation” is
 7 lacking to support Paul Olson’s statement that he has “extensive familiarity with natural
 8 resources economics, including economic impact analyses.” Dkt. No. 144 at 22-23; Dkt. No. 131
 9 at ¶ 11. Mr. Olson explained that his work involves “the valuation of ecosystem services in
 10 Southeast Alaska,” including reviewing and collecting socio-economic data on an annual basis to
 11 help publish an annual report with the Alaska Sustainable Fisheries Trust. Dkt. No. 131 at ¶ 11.
 12 That experience, in part, was the basis for Mr. Olson’s prior declarations in this matter, in which
 13 Mr. Olson opined on the annual economic output of Chinook salmon and the value of
 14 commercial fishing in general. *See* Dkt. No. 23 at ¶¶ 13, 18-19; Dkt. No. 39 at ¶¶ 13, 18-19. As
 15 the Report and Recommendation recognizes with respect to the declarants of the Federal
 16 Defendants, it is telling that WFC never previously sought to strike Mr. Olson’s declarations
 17 based on his qualifications. *See* Dkt. No. 144 at 18 n. 9.

18 Similarly, the Report and Recommendation incorrectly concludes that Mr. Fujioka’s
 19 declaration failed to establish sufficient foundation to consider his opinions on the impacts of
 20 closing fisheries or WFC’s proffered opinions. *Id.* at 23. Mr. Fujioka has a degree in Engineering
 21 and Applied Sciences from the California Institute of Technology and, as a member and prior
 22 chairman of the Sitka Fish & Game Advisory Committee, has provided advice to the Alaska
 23 Board of Fisheries on management and allocation of fishery resources. Dkt. No. 129 at ¶¶ 2, 11.
 24 That experience has provided Mr. Fujioka with specialized knowledge of the workings of the
 25 Pacific Salmon Treaty—workings that he explained in detail in his declaration. *Id.* at ¶¶ 19-22.
 26 That specialized knowledge allowed Mr. Fujioka to use mathematics to identify crucial issues

1 with the simplistic approach of the opinions proffered by WFC. *See, e.g., id.* at ¶ 27. In the very
 2 least, Mr. Fujioka's opinions were informative on how the declarations submitted by WFC were
 3 misleading.

4 In light of the flexible standard and the specialized knowledge demonstrated by Mr.
 5 Olson and Mr. Fujioka, disqualifying both the Olson and Fujioka declarations without an
 6 evidentiary hearing was improper. At a minimum, the Report and Recommendation should have
 7 considered both declarations and adjusted the weight that each declaration was given based on an
 8 assessment of the credibility of Mr. Olson and Mr. Fujioka as experts.

9 **B. The Report and Recommendation's Decision to Vacate the ITS But Not the Prey
 10 Increase Program Is Contradicted by the Reasoning of the Merits Ruling and
 Inequitably Punishes the ATA for NMFS's Illegal Conduct.**

11 The Court's holdings on the merits undercut the reasoning of the Report and
 12 Recommendation. Although the "central point" or identified flaw with NMFS's ITS was the
 13 uncertainty of the prey increase program—Dkt. No. 111 at 28, 33—the Report and
 14 Recommendation concludes that the program should continue. Roughly four months after the
 15 Court issued its order adopting the Report and Recommendation on the merits, the Report and
 16 Recommendation no longer questions whether the prey increase program is "reasonably certain
 17 to occur." *Id.* at 33 (internal quotation marks omitted). Now, the Report and Recommendation
 18 acknowledges that the program "has been fully funded for the past three years" and that "a
 19 certain and definite increase in prey is available to the SRKW from the prey increase program."
 20 Dkt. No. 144 at 11, 31.

21 That change in position is not properly accounted for in the Report and
 22 Recommendation's proposal to vacate the ITS. Although the Report and Recommendation
 23 resolves the "central point at issue" by finding that the benefits of the prey increase program are
 24 certain to occur, it inexplicably reasons that the "risk of environmental harm to the SRKW from
 25 leaving the ITS in place... counsels in favor of vacatur of the ITS." *Id.* at 34.

26 That reasoning leaves the recommended remedy untethered to the analyses that have been

1 conducted. In the 2019 BiOp, NMFS conducted a jeopardy analysis that evaluated whether the
 2 ITS would “reduce appreciably the likelihood of both the survival and recovery of a listed
 3 species.” 50 C.F.R. § 402.02; *see also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524
 4 F.3d 917, 931 (9th Cir. 2008) (concluding that “the jeopardy regulation requires NMFS to
 5 consider both recovery and survival impacts” of a decision). Based on the reduced harvest levels
 6 for Southeast Alaska fisheries and the prey increase program, NMFS concluded that the ITS
 7 would not “appreciably reduce the likelihood of both survival and recovery of Southern Resident
 8 killer whales or destroy or adversely modify their designated critical habitat.” AR47508. Beyond
 9 the uncertainty of the prey increase program, the Court did not find fault in that analysis in its
 10 ruling on the merits.

11 The Report and Recommendation ignores that jeopardy (and recovery) analysis, but
 12 handwaves the requirement to determine whether proceeding with the prey increase program
 13 would jeopardize listed salmon species, concluding that available mitigation would “limit any
 14 potential negative impacts” and NMFS could offer better reasoning in support of the program on
 15 remand. Dkt. No. 144 at 35-37. The Report and Recommendation makes no findings on why the
 16 prey increase program does not mitigate the impacts of the ITS or why NMFS would not reach
 17 the same conclusion on remand. Because the Report and Recommendation fails to explain why
 18 the mitigation provided by the prey increase program is insufficient, it effectively applies a more
 19 stringent no jeopardy standard to listed SRKWs than listed salmon species. Such a conclusion is
 20 unsupported by available analyses, unsupported by its decision on the merits, and inconsistent
 21 with the ESA.

22 **C. The Report and Recommendation Crafts an Inequitable Remedy.**

23 The remedy proposed by the Report and Recommendation is also drastically inequitable.
 24 Although Magistrate Peterson agreed that the remedy requested by WFC was not narrow but
 25 “radical” during oral argument, Dkt. No. 143 at 54:10-16, the Report and Recommendation
 26 adopts WFC’s characterization of a less cumbersome “partial” vacatur. Dkt. No. 144 at 13. This

1 remedy will close the troll fishery for 10 months of the year, effectively closing the entire fishery
 2 because trolling may no longer be economically viable if limited to two months each year. Dkt.
 3 No. 128 at 11; Dkt. No. 131 at ¶ 44.

4 The Report and Recommendation concludes that the economic consequences here “do
 5 not overcome the seriousness of NMFS’s violations” or “the harm posed to the SRKW by
 6 leaving the ITS in place.” Dkt. No. 144 at 30. Given that the error identified by the Court—the
 7 reliance on uncertain mitigation—has become a nonissue with the Report and
 8 Recommendation’s recognition of the certainty of the prey increase program, the Report and
 9 Recommendation’s conclusion of the balance between economic consequences and
 10 environmental harm is wrong. Under the factors that are considered when determining whether
 11 to remand without vacatur, the proposed remedy has resolved the environmental harm that could
 12 result from the ITS and, as a result, the agency is likely to reach the same conclusion on remand.
 13 Accordingly, the drastic economic consequences demonstrate that remand without vacatur of the
 14 ITS is demanded by equity.³ See Dkt. No. 128 at 8-9 (discussing relevant factors, including
 15 economic harm); *Coal. to Protect Puget Sound Habitat v. United States Army Corps of
 16 Engineers*, 843 Fed. Appx. 77, 80 (9th Cir. 2021) (courts deviate from ordinary remedy of
 17 vacatur when “equity demands” (internal quotation marks omitted)).

18 The economic impacts cannot be overstated. Vacating the ITS will have catastrophic
 19 economic impacts that far outweigh any impacts to the SRKW that will be mitigated by the prey
 20 increase program. The economic impacts of this remedy cannot be reduced to mere numbers that
 21 may seem insignificant to an area like Seattle. They will be damning to an entire way of life in
 22 Alaska that has existed for generations. To fully understand the generational impacts of this
 23

24 ³ The ATA recognizes that the Court also held that NMFS violated NEPA in issuing the ITS. Dkt. No. 111 at 34-35.
 25 As explained, with the prey increase program in place, the 2019 BiOp demonstrates that no jeopardy to the
 26 continued existence or recovery of SRKWs will occur. That also suggests that the ITS will be issued on remand after
 NEPA analysis. Thus, NMFS’s NEPA violations alone do not demand vacatur when the environmental harms are
 mitigated and the economic harm—as explained in this section—is drastic.

1 decision, the ATA implores the Court to review the declaration of Eric Jordan in its entirety. Dkt.
 2 No. 130. As Mr. Jordan articulated, this remedy does nothing more than cause more suffering; it
 3 lacks the particularity that will serve the listed species and the trollers of Southeast Alaska. *See*
 4 *id.* at ¶¶ 8-12.

5 The impacts will be felt beyond the level of individual families and traditions. As
 6 explained by City of Pelican Mayor Patricia Phillips, her entire city will struggle mightily
 7 without the influx of economic activity that the troller fishing seasons bring to her community.
 8 Dkt. No. 132 at ¶ 4. The State of Alaska also demonstrated that the impacts will be “far-
 9 reaching” and impact the “social and economic fabric of coastal communities in Southeast
 10 Alaska.” Dkt. No. 134 at 7.

11 Respectfully, although the Report and Recommendation claims that it “does not take such
 12 economic consequences lightly,” Dkt. No. 144 at 30, the proposed remedy does exactly that. The
 13 suggested remedy will mitigate any impacts to the SRKW from the trollers in Southeast Alaska,
 14 yet the Report and Recommendation still *chooses* to devastate an entire region of Alaska and a
 15 way of life that has persisted for generations. There is nothing equitable about this *choice* that
 16 mitigates impacts to the SRKWs, gives the Federal Defendants a pass for its faulty analysis, and
 17 punishes the ATA and communities of Southeast Alaska.

18 VI. CONCLUSION

19 The Report and Recommendation proposes that the Court use its discretion to adopt the
 20 “equitable” remedy described therein. However, the proposed remedy punishes the trollers of
 21 Southeast Alaska for the mistakes made by NMFS. Any impacts of allowing the ITS to continue
 22 to authorize the trollers to fish will be mitigated by the prey increase program. The economic
 23 consequences of the proposed remedy, however, will be dire to Southeast Alaska. Given the
 24 Report and Recommendation’s reasoning regarding the prey increase program, the Court should
 25 also elect to decline to vacate the ITS and continue to allow the trollers in Southeast Alaska to
 26 fish.

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1 DATED this 10th day of January, 2023.
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Washington using the CM/ECF system. Participants who are registered with CM/ECF will be served by the CM/ECF system.

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I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

DATED this 10th day of January, 2023, in Seattle, Washington.

/s/ Eliza Hinkes
Eliza Hinkes, Paralegal

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